Legal Matters®

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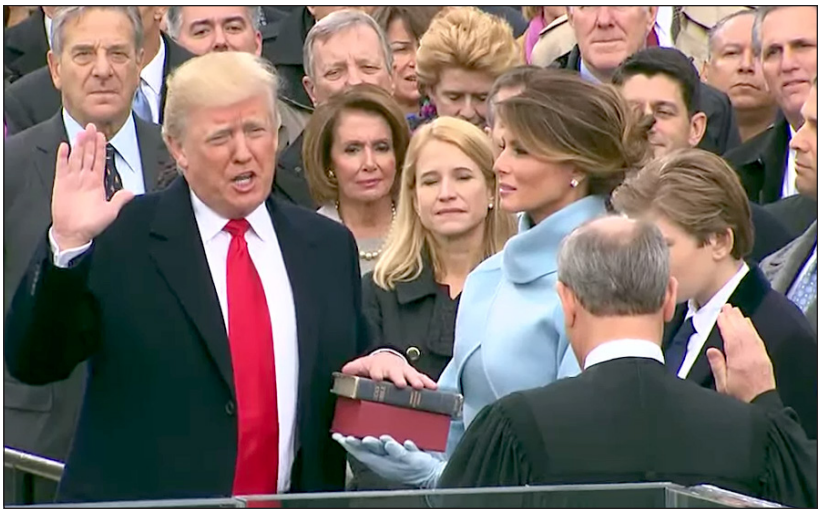
What should employers expect from a Trump Administration?

Since the moment he announced his candidacy nearly two years ago, nothing about Donald Trump has been predictable. So trying to determine what the Trump Administration might mean for employers is guesswork at best.

Still, we can probably expect his overall policies to be quite a bit different than they've been for the past eight years, and if he has any intention of keeping his campaign promises it wouldn't be surprising to see him reverse certain workplace policies that the Obama Administration put into place.



One big area Trump may target is Obama-era executive orders that affect government contractors, since he may view them as hindering economic growth and job creation and it won't take an act of Congress to undo them.

For example, Executive Order 13502, which Barack Obama signed in 2009 as one of his first actions upon taking office, strongly encourages government agencies to use "project labor agreements" on federal construction projects costing more than $25 million. These agreements enable construction unions to determine wage rates and benefits for everyone on a project before a single worker is hired. They apply to all contractors and subcontractors and replace any existing collective bargaining agreements.

Opponents say these agreements undermine competition in the construction bidding process and lead to higher costs. As a real-estate developer himself, it's not hard to see Trump revoking this order, along with another executive order that requires contractors to inform employees of their right to unionize or refrain from unionizing.

Executive Order 13672, which forbids federal contractors and subcontractors from discriminating based on sexual orientation or gender

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Be aware that your credit monitoring scores can differ

Subscribing to a credit monitoring service to keep tabs on your credit score can be a helpful way to manage and protect your credit.

But did you know that the score you purchase isn't always the same as the one the lender obtains from a credit reporting agency?

That comes as a surprise to many borrowers. But the real questions are why is this the case and what can you do about it?

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Both credit monitoring services and credit reporting agencies make money by selling credit reports. You can buy an educational credit score from a credit monitoring service when you're planning to apply for a loan, to manage your debts or to reduce the risk of identity theft.

Lenders, credit card companies and landlords buy credit reports from credit reporting agencies to help predict whether you're likely to pay your bills on time and/or default on your payments.

There are two main reasons these scores might be different: 1) different scoring models, and 2) different methods of reporting.

Scoring models

Each agency calculates your credit score in a different way, based on statistics or a proprietary algorithm. As a result, it stands to reason that the scores can be different.

Credit providers buy three types of scores from credit reporting agencies: 1) generic scores to evaluate general payment performance; 2) industry scores to predict performance on a specific type of credit; and 3) custom scores, which predict performance by the company's customer base.

Credit monitoring agencies use generic credit scores to educate you, help you make improvements to your credit and plan for the use of credit in the future.

An industry credit score applies only to your credit performance in a certain industry. That means that the score associated with whether you have paid your car loan in a timely fashion might differ from the industry score related to your performance in paying your mortgage. For example, if you always pay your car loan on time but have missed mortgage payments, it will affect your numbers.

Some lenders also have their own method of calculating a custom score that ranks you in comparison to their overall customer base.

Reporting methods

There are several common ways that reporting methods can cause differences among your credit scores.

The credit providers delivering the data might not give the information to all credit reporting agencies, or they might provide the same data but on different schedules, which can easily lead to differences in your reported scores.

Also, if you change your name or address, the new information has to be matched to the right file to ensure accuracy.

Essentially, creditors can choose what information to report to which agencies and when. While some lenders report monthly to all three agencies (Equifax, Experian and TransUnion), others might report only once per quarter or only when there is new activity on your account. Still other lenders only report to a single credit reporting agency. In addition, the reporting agencies don't share information with each other, which means the score you buy may not be derived from the same information as the score obtained by the lender.

There's nothing you can do about what credit score you or the lender will obtain at any given time. What you can do is pay attention to the information in your credit file and make sure it stays updated and accurate.

If you have a common name, confirm that only your own information appears in your credit report. Make sure there are no duplicate items in your report, and if you dispute anything, contact all three credit bureaus.

The Trump Administration: What should employers expect?

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identity, could also be vulnerable.

In addition to the foregoing, the new administration could set its sights on certain positions taken by the National Labor Relations Board.

One such area is the use of class-action waivers in employment arbitration agreements. The NLRB views such waivers, under which employees agree to submit all employment disputes to a neutral third party instead of taking them to court and to do so on an individual basis and not as a class, as violating federal labor law. But Trump will have the opportunity to fill two current vacancies on the board and a third coming up in late 2017 with members he views as more pro-management, which could result in the NLRB taking a different position going forward.

A reconstituted NLRB could reverse last year's "joint employer" decision under which companies are considered joint employers of workers provided by staffing firms. This also extends to companies that rely on subcontractors or have franchisees and is seen as boosting the ability of workers to organize.

Finally, certain Department of Labor rules imposed by the Obama Administration might not survive a Trump presidency. The most controversial was the new overtime rule that raised the salary level below which workers are entitled to overtime pay and made many white-collar workers eligible for overtime. This rule hasn't taken effect, because a federal judge in Texas ruled that the DOL didn't have the power to put it in place. An appeal of his decision was still pending as of January, but many employers oppose the rule and one could easily imagine a new Secretary of Labor pulling it off the table.

Given how much is up in the air with a new administration coming in, consider contacting an attorney where you live to discuss how you can best prepare.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Too much Pokemon Go? Parents battle over screen time

Divorced parents can battle over a lot of things, including child support, bedtimes, who gets the kids for Thanksgiving or Christmas, educational philosophy, religious observances and stepparents newly arrived on the scene.

Now there's the issue of screen time. With the increasing pervasiveness of tablets and smart phones, particularly among the younger set, it's as common to see kids glued to their iPhones or iPads as it is to see adults. But studies show that too much screen time isn't great for kids. It impacts their attention span and their cognitive abilities, and they can easily become addicted.

So what happens when you want your kids' screen time limited and your ex is perfectly happy to have them become technology zombies?

The best solution is probably to try to find a way to work it out. Sit down and have a discussion about the impact that screen time may be having on your child's studies, physical fitness and amount of sleep. Perhaps discuss the age-appropriateness of the games your child is playing or the apps he or she is using. (For example, an 8-year-old is much too young to be Facebooking, Snapchatting or Instagramming). If it's just a basic philosophical difference and there's no legitimate apparent harm to the child, your best bet might just be to let it go. After all, you can still enforce your own rules when your child is with you.

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On the other hand, if you truly feel the amount and type of screen time is causing harm to your child, you might consider court intervention, perhaps seeking an order that your child's usage be limited when he or she is with your ex-spouse. But let's be clear: You probably won't win. You'd most likely need hard evidence that your child is missing school or other important activities or has suffered some sort of actual physical or psychological harm from the excessive screen time or supposedly inappropriate use. Otherwise, it's just a battle of parenting philosophies and the court won't want to get into that. It also might make you look like a contentious, uncooperative parent, which could impact your standing in other future disputes.

Still, if this is a serious concern of yours, it may be worth talking to a family lawyer about the best way to proceed.

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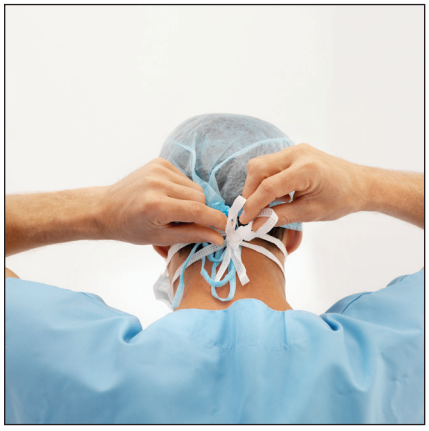
Act early if you think you've experienced medical malpractice

Most of us have a lot of respect for our doctors and trust them unconditionally. That's why when we suffer a bad medical outcome, we're reluctant to consider the possibility that our physician made a mistake. But if you think you or a loved one has suffered from medical malpractice it's important to talk to a lawyer right away, because if you wait too long the statute of limitations will have run and you'll lose your right to hold the provider responsible.



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In fact, you should call an attorney even if you think it's too late, because it might not be.

In a recent case from Massachusetts, a boy had tumor in his leg that a doctor tried to remove through a "radio frequency ablation" procedure. The procedure caused severe burning that required doctors to amputate the boy's leg below the knee.

The parents ultimately tried to take the doctor to court, but more than three years had gone by since the procedure took place. (The doctor's medical group was still treating their son all that time.) Massachusetts has a three-year statute of limitations for medical malpractice claims, so a trial court judge dismissed the case.

The Massachusetts Appeals Court reversed the ruling on appeal, adopting a "continuing treatment doctrine." Under this doctrine, the clock does not start on the statute of limitations while the doctor is still treating the patient for the same condition or a related one. That doesn't happen until either the treatment ends or the patient realizes that the physician's substandard care caused the injury.

Massachusetts' highest court later decided the boy's parents still couldn't bring their case because they should have known at an earlier time that the doctor's conduct had hurt their son. Also, it said that even though the doctor's group continued to treat the boy for more than three years after the procedure, the doctor himself did not.

Still, this decision shows that statutes of limitation don't always work the way we think they do and it's never too late to talk to a lawyer to find out what rights you might have.